

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-357-A - ORDER NO. 2013-349

MAY 23, 2013

IN RE: Application of Chem-Nuclear Systems, LLC,)	ORDER APPROVING
a Subsidiary of Duratek, Inc., for Adjustment)	AND IDENTIFYING
in the Levels of Allowable Costs and for)	ALLOWABLE COSTS
Identification of Allowable Costs)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Chem-Nuclear Systems, LLC, a subsidiary of Duratek, Inc. (“Chem-Nuclear” or the “Company”), dated September 28, 2012 (the “Original Application”). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2011-2012, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2012-2013, all of which are associated with the operation of the Company’s regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina (the “Barnwell Facility”). The Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act (the “Act”), which is codified as S.C. Code Ann. § 48-46-10, et. seq. (Rev. 2008 & Supp. 2012). On March 15, 2013, the Company filed and served an Amended Application and Exhibits which proposed certain revisions in the information contained in the Original Application to reflect the Company’s reconciliation of certain

issues with the Office of Regulatory Staff (“ORS”). On April 5, 2013, the Company filed and served the Amended Direct Testimony of Michael J. Benjamin, Second Amended Application and Second Amended Exhibits (“Amended Application”) to clarify a clerical error and correct other errors included in the March 15, 2013, Amended Application and Exhibits.

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina’s membership in the Atlantic Interstate Low-Level Radioactive Waste Management Compact Commission (the “Compact Commission”), and authorizes the manner in which South Carolina participates in the Compact Commission with the other two member states, Connecticut and New Jersey. S.C. Code Ann. § 48-46-20 (Rev. 2008).

The Act fixed a schedule of annually declining maximum volumes of low-level radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact Commission’s member states. S.C. Code Ann. § 48-46-40(A)(6)(a) (Rev. 2008). Starting on July 1, 2008, the Barnwell Facility was limited to accepting waste exclusively from generators in South Carolina, New Jersey and Connecticut, the three Compact Commission states.

In addition, the Act empowered the South Carolina Budget and Control Board (the “Budget and Control Board”) to fix the rates that an operator of a disposal facility in South Carolina may charge generators for disposal of their low-level radioactive waste.

The Act fixed fees for various purposes and provided for the disposition of revenues produced by the operation of disposal facilities subject to the Act. The Barnwell Facility is the only disposal facility for low-level radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the “allowable costs” of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Rev. 2008). “Allowable costs” are “costs to a disposal site operator of operating a regional disposal facility,” and they “are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations.” S.C. Code Ann. § 48-46-30(1) (Rev. 2008). The Act provides that “allowable costs” expressly include the costs of certain specifically identified activities necessary in the operation of a low-level radioactive waste facility. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Rev. 2008). Section 48-46-40(3) also provides that “allowable costs” include “any other costs directly associated with disposal operations determined by [the Commission] to be allowable.” The Act excludes from identification as “allowable costs” the costs of certain expressly listed activities and “any other costs determined by [the Commission] to be unallowable.” S.C. Code Ann. § 48-46-40(B)(3) (Rev. 2008).

The Act entitles a disposal facility operator to recover an operating margin of twenty-nine percent (29%). This operating margin is authorized for the total amount of all identified “allowable costs,” excluding allowable costs for taxes, licensing, and permitting fees which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Rev. 2008).

The level of “allowable costs” and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At the end of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue that the operator had received for waste disposal services during the fiscal year, reduced by the operator’s identified “allowable costs,” and reduced further by the twenty-nine (29%) statutory operating margin on the “allowable costs” under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of certain administrative costs which the Budget and Control Board, the Commission, the State Treasurer, and the Compact Commission have incurred for the conduct of those agencies’ functions in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Rev. 2008).

The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of “allowable costs” which the Commission had identified for the previous fiscal year and for identification of costs which the Commission had not previously identified as “allowable costs.” S.C. Code Ann. § 48-46-40(B)(4) (Rev. 2008). Upon disposition of the issues in an application, the Act requires the Commission to authorize the site operator to adjust its “allowable costs” for the current fiscal year to compensate the site operator for revenues “lost” during the previous fiscal year (that is, the difference between the level of “allowable costs” previously identified and the level of “allowable costs” identified upon approval of the application). *Id.*

Chem-Nuclear filed its Original and Amended Applications in this proceeding seeking to adjust the level of certain “allowable costs” which the Commission identified in Order No. 2012-400 and the amount of such costs that the Company actually experienced in the Fiscal Year 2011-2012. The Original and Amended Applications also sought identification of the Company’s “allowable costs” for Fiscal Year 2012-2013. Chem-Nuclear’s Second Amended Application did seek an adjustment or additional compensation for the Company for “allowable costs” incurred in Fiscal Year 2011-2012 as the actual costs specified in the Second Amended Application were more than those identified and approved in Order No. 2012-400. Second Amended Application for Fiscal Year 2012-2013, ¶¶ 11-16 and Exhibit A to the Second Amended Application.

Upon receipt of the Company’s Original Application, the Commission’s Clerk’s Office directed Chem-Nuclear to publish a Notice of Filing, advising the public of the submission of the Original Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear filed affidavits of publication which demonstrated its compliance with the instructions of the Clerk’s Office .

The Act specifies certain agencies to be parties of record in proceedings for identification of “allowable costs” before the Commission. Those parties are: the Budget and Control Board, the Executive Director of the ORS and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40(B)(9) (Rev. 2008). In addition, the Compact Commission and the South Carolina Department of Health and Environmental Control (“DHEC”) have the discretion under the Act to participate as parties. Id.

Pursuant to the provisions of S.C. Code Ann. § 58-4-10(B) (Rev. 2008), ORS represents “the public interest” in proceedings in this Docket.

On April 10, 2013, the Commission held an evidentiary hearing with respect to the issues in the Company’s Amended Application. The Honorable David A. Wright, Chairman, presided. Randall Dong, Esquire, served as Advisor to the Commission. Appearances were as follows: J. David Black, Esquire, represented Chem-Nuclear; Jeffrey M. Nelson, Esquire, represented ORS. South Carolina Electric & Gas Company (“SCE&G”) was represented by K. Chad Burgess, Esquire, and Bonnie D. Shealy, Esquire, appeared on behalf of the Compact Commission. Progress Energy Carolinas, Inc. (“Progress”) and Duke Energy Carolinas, LLC (“Duke”), which had intervened and joined in the settlement of the issues in this case, did not appear at the hearing. The Budget and Control Board, DHEC, and the Attorney General did not appear or participate in the hearing.

By way of a Settlement Agreement, dated March 22, 2013, the Parties resolved various issues raised in the Original Application and during the audit which ORS conducted. The Settlement Agreement was filed with the Commission on March 22, 2013, and was entered in the record of this proceeding as Hearing Exhibit No. 1. The Settlement Agreement includes an Attachment A which consists of the “Examination Report for Docket No. 2012-357-A” (including Exhibits A and AA thereto) prepared by ORS and dated March 22, 2013.

At the hearing, Chem-Nuclear presented the testimony of one witness, Michael J. Benjamin, Chem-Nuclear’s site manager, who presented his testimony and answered

questions from the Commission regarding the future operation of the Barnwell facility, safety and security issues at the facility. In response to several accounting questions from the Commission, Chem-Nuclear also called Mrs. Carol A. Hurst, Chem-Nuclear's Controller, to the stand to answer questions related to general accounting and financial issues concerning the Amended Application. ORS also called John Powers, ORS Auditor, to answer cost and accounting questions relating to the audit. The record of this proceeding consists of the pleadings, the Commission's notices, the transcript of oral testimony, and one (1) hearing exhibit.

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2011-2012 and for Fiscal Year 2012-2013 were resolved among the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

A. "Allowable Costs" for Fiscal Year 2011-2012

In accordance with the provisions of the "Collaborative Review of Chem-Nuclear's Operations and Efficiency Plan" ("OEP"), approved in Order No. 2004-349 for use in these "allowable cost" proceedings, Chem-Nuclear's Original Application and Amended Application separated costs into three (3) categories of costs: fixed, variable and irregular. See Second Amended Exhibit A to Chem-Nuclear's Second Amended Application and Hearing Exhibit No. 1 (ORS Examination Report, Exhibit A). As

recognized in Order No. 2004-349, the OEP was valid for use as a “baseline for establishing a method for identifying ‘allowable costs.’” Order No. 2004-349, p. 17.

1. Fixed Costs for Fiscal Year 2011-2012

Chem-Nuclear separated its fixed costs for Fiscal Year 2011-2012 into several general categories: labor and fringe costs, non-labor costs, corporate allocation of general and administrative expense, equipment leases and support, depreciation, and insurance, as well as those fixed costs for which the statutory operating margin was not applicable. The Company’s operating expense for that period resulted in total fixed costs of \$2,876,147, which Chem-Nuclear actually incurred. Second Amended Application, ¶11 and Second Amended Exhibit A, p. 1. Since the total fixed costs incurred for 2011-2012 were \$121,899 more than the level of fixed costs anticipated in Order No. 2012-400, the Company requested an adjustment to the identified allowable fixed costs for Fiscal Year 2011-2012. ORS Examination Report, Exhibit A; Second Amended Application Second Amended Exhibit A, p. 1. The record supports the identification of \$2,876,147 as fixed “allowable costs” for Fiscal Year 2011-2012.

2. Variable Material Costs for Vaults for Fiscal Year 2011-2012

The actual costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. For Fiscal Year 2011-2012, Chem-Nuclear’s actual cost for disposal vaults was \$437,861. Hearing Exhibit No. 1, Attachment A, Exhibit A. This amount is \$20,604 more than the \$417,257 variable cost calculated using the rates established in Order No.

2012-400. The evidence supports treatment of the \$437,861 actual vault costs as “allowable.”

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2011-2012

Order No. 2012-400 determined various categories of rates applicable to the following: purchase, inspection and placement of disposal vaults, handling of the various classes of waste shipments, slit trench offload operations, customer assistance, and scheduling of waste shipments and maintenance of disposal records. Second Amended Application, Second Amended Exhibit A, p. 2. The Company incurred actual variable labor and non-labor costs of \$231,559 in Fiscal Year 2011-2012, which the Company has requested to be included in this category of costs for Fiscal Year 2011-2012. *Id.* This amount is \$18,478 less than the amount that had been anticipated based on rates provided in Commission Order 2012-400. The Company therefore requests no adjustment in this category of costs. The record supports treatment of actual variable labor and non-labor costs of \$231,559 as “allowable.”

4. Irregular Costs for Fiscal Year 2011-2012

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. This category includes, but is not limited to, costs associated with trench design, site engineering, site assessment, and license renewal and appeal costs. See, Hearing Exhibit No. 1, Attachment A, Exhibit A, pg. 2 of 2. The record contains descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2011-2012. *Id.*, Second Amended Application, Second Amended Exhibit B. The evidence here establishes that Chem-

Nuclear incurred actual irregular costs for Fiscal Year 2011-2012 of \$259,408. Second Amended Application, Second Amended Exhibit A and Hearing Exhibit No. 1, Exhibit A to Attachment A. The record supports treatment of actual irregular costs for fiscal year 2011-2012 of \$259,408 as “allowable.”

B. Proposed “Allowable Costs” for Fiscal Year 2012-2013

Chem-Nuclear’s Second Amended Application and the evidence in the record presented “allowable costs” to be identified for Fiscal Year 2012-2013, separated into the three (3) cost categories that were described in the Collaborative Review of the OEP and adopted in Order No. 2004-349.

1. Allowable Fixed Costs for Fiscal Year 2012-2013

Chem-Nuclear proposed fixed costs of \$2,937,390 to be identified as “allowable costs” for Fiscal Year 2012-2013. That amount was based on actual fixed costs incurred in Fiscal Year 2011-2012, with appropriate adjustments for inflation as the Commission has previously approved, or was based on actual fixed costs incurred during the months of July 2012 through December 2012. Second Amended Application, Second Amended Exhibit C and Hearing Exhibit No. 1, Attachment A, Exhibit AA.

2. Allowable Irregular Costs for Fiscal Year 2012-2013

Chem-Nuclear’s Second Amended Application includes general categories of projects with estimated total costs of \$191,172, which it categorized as irregular costs for Fiscal Year 2012-2013. These irregular costs, identified in Second Amended Exhibit C to the Second Amended Application, are based on costs incurred in the first half of Fiscal Year 2012-2013 and activities anticipated for the second half of the Fiscal Year.

3. Variable Material Cost (Vaults) Rates for Fiscal Year 2012-2013

For Fiscal Year 2012-2013, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which we had approved in Order No. 2012-400 for Fiscal Year 2011-2012, as adjusted for changes in the cost of concrete disposal vaults from Chem-Nuclear's supplier. Second Amended Application, Second Amended Exhibit C.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2012-2013

For Fiscal Year 2012-2013, Chem-Nuclear proposed rates for variable labor and non-labor costs. Second Amended Application, Second Amended Exhibit C. Those rates pertained to five (5) categories: vault purchase and inspection (per vault); ABC waste disposal (per shipment); Slit Trench Waste Operations (per offload); customer assistance (per shipment); and maintenance of trench records (per container). The rates for vault purchase and inspection, ABC waste disposal, slit trench operations, customer assistance, and maintenance of records were based on the rates which were approved in Order No. 2012-400, adjusted to more accurately reflect actual costs.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. § 48-46-40(B), et seq. (Rev. 2008 & Supp. 2012) to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site continuously since 1971 without interruptions. Undisputed amounts in Chem-Nuclear's accounts that will herein

be identified and approved by this Commission as “allowable costs” for Fiscal Year 2011-2012 are included in Appendix A, which is attached to this Order.

3. Further, we approve and identify as “allowable costs” for Fiscal Year 2012-2013 the individual figures and the sum of \$3,128,562 in fixed and irregular costs, as reflected in Appendix B, which is attached to this Order.

4. We further approve the variable cost rates for Fiscal Year 2012-2013, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable cost category will be dependent on the actual volumes and classes of waste received. The rates in Appendix B are appropriately documented and supported by evidence in the record of this proceeding.

5. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



David A. Wright, Chairman

ATTEST:



Randy Mitchell, Vice Chairman
(SEAL)

APPENDIX A – Order No. 2013-349
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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2012

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Fixed Labor, Fringe and Non-Labor Costs	\$1,643,902
Depreciation	\$58,468
Insurance	\$341,596
Equipment and Leases and Support	\$149,177
Corporate G&A	\$648,695
Legal Support*	\$34,309
Total Fixed Costs	\$2,876,147
Variable Costs	
Vault Costs	\$437,861
Variable Labor and Fringe**	\$231,559
Total Variable Costs	\$669,420
Irregular Costs	
Total Irregular Costs	\$259,408
Total Allowable Costs	\$3,804,975

* Not subject to statutory operating margin.

**Categories of costs include: Vault Purchase and Inspection, ABC Waste Disposal, Slit Trench Operations, Waste Acceptance and Trench Records.

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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2012

<u>Irregular Cost Item</u>	<u>Labor & Fringe</u>	<u>Non Labor</u>	<u>Total Cost</u>
Various Trenches	\$41,800	\$151,062	\$192,862
License Renewal and Appeal	\$4,865	\$4	\$4,869
Site Engineering and Drawing Updates	\$570	\$999	\$1,569
Record Retention/Waste Tracking	\$2,676	\$0	\$2,676
Increased Security Controls	\$191	\$3,793	\$3,984
Other Irregular Costs	\$14,405	\$38,782	\$53,187
Institutional Overage	\$261	\$0	\$261
<u>Total Irregular Costs</u>	<u>\$64,768</u>	<u>\$194,640</u>	<u>\$259,408</u>

APPENDIX B – Order No. 2013-349
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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year 2012-2013 (Ending June 30, 2013)

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Labor and Fringe and Non-Labor	\$1,721,953
Depreciation	\$58,468
Insurance	\$322,044
Equipment Leases and Support	\$137,918
Corporate Allocation (Management Fee/G&A)	\$661,669
Legal Support*	\$35,338
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Total Fixed Costs	\$2,937,390
Irregular Costs	
Trench Construction	\$116,390
License Appeal	\$10,000
Corrective Action	\$5,000
Site Assessments	\$5,000
Miscellaneous	\$54,782
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Total Irregular Costs	\$191,172
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Total Fixed and Irregular Costs	\$3,128,562
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Variable Costs	
<u>Variable Labor and Non-Labor Rates</u>	
Vault Purchase and Inspection (per vault)	\$186.79
ABC Waste Disposal (per shipment)	\$1,169.00
Slit Trench Shipment (per offload)	\$23,423.00
Customer Assistance (per shipment)	\$80.75
Trench Records (per container)	\$325.00
<u>Variable Material Costs (Vault Costs)</u>	
Class A Waste (per cubic foot)	\$40.29
Class B Waste (per cubic foot)	\$45.63
Class C Waste (per cubic foot)	\$49.62
Slit Trench Waste (per cubic foot)	\$156.19

* Not subject to statutory operating margin